IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.3323 OF 2004

IN

SUIT NO.2900 OF 2004

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Deepak Nitrite Limited ...Plaintiffs

v/s.

Century Plyboards (India) Limited. ...Defendants

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Mr.V.R.Dhond i/b M/s.Bharat Shah & Co. for the Plaintiffs.

Dr.V.V.Tulzapurkar with Mr.Salil Shah and Mr.R.H.Gajaria for Defendants.

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CORAM: D.K.DESHMUKH, J.

DATED: 29TH SEPTEMBER,2005

P.C.:

1. This Notice of Motion is taken out by the Plaintiffs. The suit of the Plaintiffs is for a decree of perpetual injunction restraining the Defendants from using the trademark "GLP". The case of the Plaintiffs is that the Defendants are trying to pass of their goods i.e. plywood under the trademark "GLP" as that of the Plaintiffs. The Plaintiffs have taken out this notice of motion claiming an order of temporary injunction in the same terms in which the order of perpetual injunction is sought in the civil suit. According to the Plaintiffs, the Plaintiffs are selling their products under the various trademarks PROTECTO, PROTECTO FX, PROTECTO GLP and/or GLP. According to the Plaintiffs, the Plaintiffs are the first to adopt and use the mark "GLP" which is coined from the words "Glue Line Poison" for their goods/products. According to the Plaintiffs, the Plaintiffs are using the trademark "GLP" since 1998. According to the Plaintiffs, from the year 2002 the Defendants have started selling their plywood under the trademark

"GLP" and thus are trying to pass of their goods as that of the Plaintiffs.

2. The Notice of Motion is contested by the Defendants. According to the Defendants, the Plaintiffs do not sell their product which is a chemical under the trademark "GLP". The Plaintiffs sell their product under the trademark PROTECTO GLP and that product is chemical and the product of the Plaintiffs is plywood and therefore there is no question of there being any likelihood of confusion considering that the products of the Plaintiffs and the Defendants are clearly different. According to the Defendants, the Defendants' sell of the products under the trade mark "GLP" from the year 2000-01 to 2004-05 is on huge scale. The Defendants have given the sale-figures in paragraph 17 of the affidavit in reply filed in this Notice of Motion. Paragraph 17 reads as under:-

> 17. The extent of goodwill, reputation and the volume of sale of the Defendants' products under the said mark GLP in relation to its plywood products, block

boards etc. is evident and established from the sales figures. In proof of the said fact, the yearwise sales figures of the Defendants' products under the mark GLP from the year 2000-2001 to 2003-2004 are set out hereinbelow:-

Year	Sales figures (In Rs.)
2000-01	478,086,017.00
2001-02	326,286,401.00
2002-03	310,711,144.00
2003-04	318,767,513.00

3. The Plaintiffs have also disclosed the sale-figures of their products under the trademark PROTECTO, PROTECTO FX, PROTECTO GLP AND GLP in their affidavit dated 3rd March, 2005. Paragraph 5 of that reads as under:-

5. The Plaintiffs have affected large and

ready sales of wood preservatives bearing the trade marks PROTECTO, PROTECTO FX, PROTECTO GLP and GLP. The following is a statement containing annual turnover of the Plaintiffs' said goods sold under the trade marks PROTECTO GLP and GLP.

Sr.No.	Year	Quantity sold (in MT)	Value (in Rs.)
1.	April 1999 to March 2000	0.99	1,60,000/-
2.	April 2000 to March 2001	16.27	26,00,000/-
3.	April 2001 to March 2002	15.89	25,40,000/-
4.	April 2002 to March 2003	18.60	27,90,000/-
5.	April 2003 to March 2004	18.32	27,50,000/-
6.	April 2004 to July 2004	8.33	12,50,000/-

4. The learned Counsel appearing for the Defendants also submits that merely because the field of activities of the Defendants and the Plaintiffs is

different, the possibility of confusion because of the similarity in the trade mark cannot be ruled out. Defendants also rely on the stand that is taken by the Defendants in the suit filed by the Defendants in the Calcutta High Court.

5. After having heard the learned Counsel for both sides at length and after having gone through the record, I find that there is no possibility of there being any deception or confusion in the public mind, firstly because from the record it appears that the Defendants are not selling their products which is a chemical under the trademark "GLP". They are selling their products under the trade mark "PROTECTO GLP". The nature of products of the Plaintiffs and the Defendants is totally different. Considering the sale figures disclosed by the parties of their respective products it cannot be said that the Defendants have adopted the mark "GLP" in order to take advantage of the reputation of the Plaintiffs' mark. The sale-figures of its product disclosed by the Defendants does not lead one to that conclusion.

6. Taking overall view of the matter, therefore, in

my opinion, as I do not see any possibility of their being any confusion and deception, there is no question of granting any interim order in favour of the Plaintiffs. Notice of Motion is, therefore, disposed of.

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